GOVERNMENT OF INDIA
LAW , JUSTICE AND COMPANY AFFAIRS
LOK SABHA

STARRED QUESTION NO:344
ANSWERED ON:16.08.2001
ANTI-DEFECTION LAW
KANTI SINGH;MOHAMMED SHAHABUDDIN

Will the Minister of LAW , JUSTICE AND COMPANY AFFAIRS be pleased to state:

(a) whether the Government have taken note of the frequent changing of party loyalty by the elected representatives of Parliament and State Legislatures after their elections on the ticket of a particular party, taking advantage of the present Anti-Defection Law;

(b) if so, the details thereof;

(c) whether it is proposed to entrust the Election Commission of India with the responsibility to decide the cases of defection under the Anti-Defection Law; and

(d) if so, the details thereof?

Answer

MINISTER OF LAW, JUSTICE & COMPANY AFFAIRS AND SHIPPING (SHRI ARUN JAITLEY)

(a) & (b) Yes, Sir. There has been considerable debate on the provisions of the Tenth Schedule to the Constitution of India (Anti-Defection Law). As the provisions now stand, the Presiding Officer of a House has the power to decide the issue of disqualification of a Member under the Tenth Schedule. In Kihota Hollohon Vs Zachilhu and others, AIR 1993 SC 412 at 449, the Supreme Court of India held that the Presiding Officer of a House acting under paragraph 6(1) of the Tenth Schedule is a Tribunal.Hence, the decision of the Presiding Officer is subject to judicial review by a court of law.

(c)& (d) To overcome the problem of judicial review and on the lines of articles 103 and 192 of the Constitution of India, it has been suggested by the Election Commission that the question of disqualification of Members based on the Tenth Schedule, should be decided by the President or the Governor as the case may be, after obtaining the opinion of the Election Commission of India. However, the Government has not taken any view in the matter.